

**ENVIRONMENTAL PROTECTION AGENCY****[EPA-R09-OAR-2022-0705; FRL-10086-01-R9]****Clean Air Act Grant; Hawaii Department of Health; Opportunity for Public Hearing****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Proposed action; determination with request for comments and notice of opportunity for public hearing.**SUMMARY:** The EPA is proposing to determine that the reduction in expenditures of recurrent non-Federal funds for the Hawaii Department of Health (HDOH) in support of its continuing air program under section 105 of the Clean Air Act (CAA) for the fiscal year (FY) 2022 is a result of non-selective reductions in expenditures. This determination, when final, will permit the HDOH to receive grant funding for FY2023 from the EPA under section 105 of the CAA.**DATE:** Comments and/or requests for a public hearing must be received by the EPA at the address stated below on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.**ADDRESSES:** Submit your comments, identified by Docket ID No. **EPA-R09-OAR-2022-0705** at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Proprietary Business Information (PBI) or Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (e.g. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER**

**INFORMATION CONTACT** section. For the full EPA public comment policy, information about PBI/CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Asia Yeary, EPA Region IX, Pacific Islands Contact Office, Prince Kuhio Federal Building, 300 Ala Moana Blvd, Suite 5-152, Honolulu, HI 96850; phone at (808) 541-2726 or email at [yeary.asia@epa.gov](mailto:yeary.asia@epa.gov).

**SUPPLEMENTARY INFORMATION:** Section 105 of the CAA provides grant funding to air pollution control agencies for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. CAA section 105 grants require a cost share (also referred to as a match requirement) of 40%. Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. In addition, air pollution control agencies must meet a maintenance of effort (MOE) requirement in accordance with section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1).

The MOE provision requires that an eligible agency spend at least the same dollar level of funds as it did in the previous grant year for the costs of recurring activities. Specifically, section 105(c)(1) of the CAA provides that, “No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.” However, pursuant to CAA section 105(c)(2), 42 U.S.C. 7405(c)(2), the EPA may still award a grant to an agency not meeting the requirements of section 42 U.S.C.

7405(c)(1), “...if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.” These statutory requirements are repeated in the EPA’s implementing regulations at 40 CFR 35.140-35.148. The EPA issued a memorandum dated September 30, 2011, entitled “Updated Information for Determining a Non-Selective Reduction” with guidance to recipients on what constitutes a nonselective reduction. In consideration of the legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each executive branch agency needs to be reduced in equal proportion. However, it must be clear to the EPA, from the weight of evidence, that a recipient’s CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A section 105 grant recipient must submit a final federal financial report no later than 120 days from the close of its grant period that documents all of its federal and non-federal expenditures for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable the EPA to determine that a nonselective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction’s executive branch agencies, and the recipient’s air program. The recipient needs to identify any executive branch agencies or programs that should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in key areas will be needed: budget data specific to the recipient’s air program; and comparative budget data between the recipient’s air program, the agency containing the air program, and the other executive branch agencies. The EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements, and

documentation that explains the cause of the reduction, such as legislative changes or the issuance of a new executive order.

In FY2021, the EPA awarded the HDOH \$781,332, which represented approximately 29% of the HDOH budget. In FY2022, the EPA awarded the HDOH \$884,194, which represented approximately 31% of the HDOH budget.

HDOH's final federal financial report for FY2021 indicated that HDOH's MOE level was \$1,918,582. HDOH expects their FY2022 expenditures to be approximately \$1,645,864, which indicates that HDOH's expenditures of non-federal funded recurring activities is not sufficient to meet the MOE requirements for FY2022 under section 105 of the CAA because it is not equal to or greater than the MOE for the previous fiscal year.

The EPA must make a determination (after notice and an opportunity for a public hearing) that the reduction in expenditures from 2021 to 2022 is attributable to a non-selective reduction in the expenditures in the programs of all executive branch agencies of Hawaii's State government.

The HDOH is a department organizationally within the Hawaii State government, which is the unit of government for CAA section 105(c)(2) purposes.

On July 5, 2022, the HDOH submitted a request to the EPA seeking a reduction for the required MOE for FY2022 due to a non-selective reduction in expenditures. The HDOH explained that it will be unable to meet its MOE requirement due to the significant economic and health impacts from the COVID pandemic. This reduction in recurring expenditures is the result of HDOH experiencing significant payroll changes impacting its overall budget. Not only are senior level employees retiring, with some positions filled by entry level staff at lower starting salaries, other positions remain vacant due to the conditions caused by the COVID-19 pandemic.

HDOH explained that the reduction is non-selective because the air program is not being disproportionately impacted or singled out as the reduction of expenditures due to increased vacancies and inability to replace staff is occurring throughout the State government, and not exclusively to the air program. Hawaii is currently experiencing one of the highest rates of out-

migration of its work-age population. State agencies have lost staff and have struggled to hire new staff to replace them.

The vacancy data provided by Hawaii's Department of Human Resources Development (DHRD) and HDOH's Human Resources (HR) shown below supports the requested MOE reduction by demonstrating that a non-selective reduction in the expenditures of all executive branch agencies has occurred. The air program's vacancy rate increased by 3.23%, from 27.42% in 2021 to 30.65% in 2022 and the majority of HDOH's environmental programs' vacancy rates also increased anywhere from 1.69% to 30.95% during this same time frame. In line with the air program and the other environmental program vacancy increases, the vacancy rate for the entire HDOH (which contains the air program and other environmental programs) increased by 3.88% (from 17.38% to 21.25%) during this period. Overall statewide (executive branch agencies) position vacancy rates showed an even larger increase of 7.88% from 2021 to 2022. Trends in the HDOH and executive branch agency data show steady increases in vacancy rates with the largest increase occurring over the last year. The air program's vacancy rate increase of 3.23% is slightly smaller than the HDOH's increase of 3.88% and less than half of the executive branch agency increase of 7.88% over the past year.

The EPA proposes to find that the request for a reset of HDOH's MOE meets the requirements for a non-selective reduction under CAA section 105. The HDOH's reduction in personnel expenses and significant cut back on expenditures caused by the COVID-19 pandemic contributed to the reduction in expenditures.

The EPA proposes that the MOE for HDOH's FY2022 CAA section 105 grant be reduced to \$1,645,864 to address the non-selective reduction of recurrent expenditures discussed above.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the CAA. All written substantive comments received by **[Insert date 30 days after date of publication in the *Federal Register*]** on this proposal will be considered. The EPA will conduct a public hearing on this proposal only if a written request for such is received by the

EPA by [**Insert date 30 days after date of publication in the *Federal Register***]. If no written request for a hearing is received or if the EPA determines that the issues raised are insubstantial, the EPA will proceed to reduce HDOH's MOE for FY2022.

Dated: August 9, 2022.

**Elizabeth Adams,**  
*Director, Air and Radiation Division, Region IX.*

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